

**Coleman, Charles**

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**From:** Carl Nyman <cnyman@adlc.us>  
**Sent:** Tuesday, February 28, 2017 9:47 AM  
**To:** Coleman, Charles; Lensink, Andy; Joel Chavez; Jon Morgan  
**Cc:** Bill Everett; District 1 Commissioner; Brion Lindseth; Jennifer Hepp; Elizabeth Erickson  
**Subject:** FW: Premier Industries -- Proposed Amendment to Deed Restrictions & Consent to Be Bound  
**Attachments:** removed.txt; Amendment to Deed Restrictive Covenants 222.pdf; Consent to Be Bound by Agreement 222.pdf

Charlie, Andy, Joel, and Jon,

Enclosed for your review is a draft consent to be bound agreement for the PPA, proposed by Premier Industries' attorney Chris Johnson for the County-owned Mill Creek parcel (slag processing development).

I'm also enclosing the draft amendment to deed restrictive covenants so you can see what is being proposed, as the County and AR consider this document.

I have shared both of these documents with AR.

I'm wondering if you could provide some feedback on these documents by the end of next week (verbal or otherwise)?

Let me know if you have any questions.

Thanks,

Carl

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**From:** Chris Johnson <cjohnson@wordenthane.com>  
**Date:** Friday, February 24, 2017 at 3:31 PM  
**To:** Carl Nyman <cnyman@adlc.us>  
**Subject:** Premier Industries -- Proposed Amendment to Deed Restrictions & Consent to Be Bound

Carl, per our conversation, attached in pdf are the two proposed documents. The Consent to Be Bound document has the potential to be impacted by the pending revision of the PPA (or original Consent instrument), so I look forward to having a look at that, when possible.

**Chris A. Johnson**



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After Recording Return To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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### AMENDMENT TO DEED RESTRICTIVE COVENANTS

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COMES NOW the undersigned parties, Anaconda-Deer Lodge County (ADL), and Atlantic Richfield Company ("ARCO"), and provide as follows:

#### RECITALS

1. Certain real property (the "Property") that was the subject of a conveyance from ARCO to ADL (the "Deed") was made subject to certain deed restrictions. Said conveyance, together with the deed restrictions contained therein, was dated May \_\_\_\_, 1994 and recorded May \_\_\_\_, 1994 in Book \_\_\_\_ at Page \_\_\_\_ records of Anaconda-Deer Lodge County, Montana.
2. The Property is owned by ADL and is identified and described as being: Plat 193-B, recorded April 25, 1994 in the real property records of Deer Lodge County, Montana.
3. Section H of the above-referenced conveyance and deed restrictions provided as follows:

#### H. MODIFICATION OF RESTRICTIVE COVENANTS

The Restrictive Covenants may be modified from time to time as follows:

- a. Required Approvals. Any proposed modification must be approved in writing by ARCO, ADL and the owner of the Parcel burdened by the Restrictive Covenant to be modified. EPA and the State shall be provided prior written notice of such proposed modifications. If EPA and the State do not object in writing to such modifications within 21 days of such notice, the modifications shall be deemed accepted by EPA and the State. Such written

approval by ARCO, ADL and the parcel owner may be evidenced by execution of the instrument created to amend the Restrictive Covenants.

- b. Recordation of Modification. In order to be effective, any modification of the Restrictive Covenants must be (i) in writing, (ii) executed by each of the persons described in paragraph a. above, with such signature duly notarized (to the extent required by Montana law). and (iii) duly recorded in the Deer Lodge County real property records.
4. The required approvals to modification having being acquired, as evidenced below by the signatures of the authorized representatives of ADL (as necessary party to modification and owner of the subject property) and ARCO, and notice of the proposed modification having been given to EPA and the State of Montana, and there being no written objection made by such parties, the undersigned therefore make the following amendment to the Deed and the Restrictive Covenants contained therein:

Amendment

Section E. 2. i. of the Deed's Restrictive Covenants is amended in its entirety to read as follows:

- i. Except for areas described in Attachment attached hereto and incorporated herein 2 (the Industrial Areas), any Commercial or Industrial activities (as such terms are defined in the Development Permit System: if otherwise permitted by the Restrictive Covenants set forth herein, which require or allow Hazardous Materials to be brought upon, generated, treated, stored, handled or disposed upon, about or beneath the Property shall be prohibited, except for those Commercial or Industrial activities which would qualify as a Small Quantity Generator. Specifically allowed within the Industrial Areas are slag and Mining Waste processing facilities and related buildings and infrastructure, for the extraction and processing of product from such slag and Mining Waste. All such allowed processing facilities shall otherwise be as permitted under pertinent local, state, and federal ordinances, laws, and regulations, and shall comport with the Development Permit System.

IN WITNESS WHEREOF, the undersigned have executed the foregoing Amendment to Deed Restrictive Covenants on the \_\_\_\_ day of \_\_\_\_\_, 2017.

Anaconda-Deer Lodge County

\_\_\_\_\_  
by: \_\_\_\_\_  
its: Chief Executive Officer

STATE OF MONTANA                    )  
  : ss.  
County of Missoula                    )

This instrument was acknowledged before on the \_\_\_\_\_ day of \_\_\_\_\_ 2017, by  
\_\_\_\_\_, as Chief Executive Officer of Anaconda-Deer Lodge County.

(seal)

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_, 20\_\_

by: \_\_\_\_\_  
its: \_\_\_\_\_

AMENDMENT TO DEED RESTRICTIVE COVENANTS  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

IN THE MATTER OF:

Anaconda Smelter Superfund Site, Old Works/  
East Anaconda Development Area Operable Unit

UNDER THE AUTHORITY OF THE  
COMPREHENSIVE ENVIRONMENTAL  
RESPONSE, COMPENSATION, AND  
LIABILITY ACT OF 1980, 42 U.S.C.  
§ 9601, et seq., as amended.

CONSENT TO BE BOUND BY  
AGREEMENT AND COVENANT  
NOT TO SUE

EPA Docket No. CERCLA 94-12

1. The original Agreement and Covenant Not to Sue, EPA Docket No. CERCLA 94-12 ("Agreement"), and the definitions therein, and attachments thereto are incorporated herein by reference.

2. The United States Environmental Protection Agency ("EPA"), the State of Montana ("State"), Anaconda-Deer Lodge County ("ADL"), and the Old Works Golf Course Authority or the Old Works Golf Course, Inc. (the "Authority") are the parties to the Agreement (the "Parties").

3. Premier Industries, LLC, a Montana limited liability company, ("Premier") has entered into a lease with option to purchase with ADL, in which ADL has leased certain premises or real property (the "Property") to Premier, and Premier has the right to acquire fee ownership of said Property from ADL upon completion of subdivision of the subject property by ADL. Said Property is a portion of the Mill Creek Parcel, as identified in the Agreement, and is more specifically depicted and described in the attached Exhibit A. Premier intends to conduct and perform certain commercial functions on said Property, involving use of slag material from the Anaconda Smelter Superfund site.

4. Premier wishes to be a Successor in Interest and Assigns as defined in the Agreement, and to receive the same assurances and covenants originally extended to ADL in the Agreement, and is willing to bind itself to the obligations agreed to by ADL, excepting those described in Paragraph 32 (a) and (b). In addition, and as a material element to this Consent, the covenants or deed restrictions referenced in Paragraph 32 (c) of the Agreement will be amended, in furtherance of Premier's intended use of the real property.

5. Premier represents, and for the purposes of the transfer of the benefits and obligations

of the Agreement to Premier, EPA and the State rely on those representations, that Premier has had no involvement with the Facility such that it is a "covered person" under CERCLA Section 107, 42 U.S.C. § 9607.

6. Premier hereby consents to be bound by the Agreement, including, but not limited to, Section IV (Consideration), Section V (Access/Notice to Successors in Interest and Assigns), Section VI (Due Care), Section VII (Certification), Section VIII (Covenant Not to Sue Under CERCLA), Section X (Parties Bound/Transfer of Covenant) and any and all other obligations under the Agreement.

7. Premier shall not be responsible for the enforcing of the Development Permit System as provided for in Paragraph 32 (a) or for implementing, maintaining, and enforcing O&M requirements as provided for in Paragraph 32 (b), but agrees to comply with such requirements as enforced and/or implemented by ADL.

8. EPA and the State agree, subject to Section IX (Reservation of Rights), under the covenants set forth in Section VIII (Covenant Not to Sue) not to take any civil or administrative action against ADL, and by extension Premier, for any and all civil liability for

(a) injunctive relief or reimbursement of Response costs pursuant to CERCLA Section 106 or 107 (a), 42 U.S.C. § 9606 or 9607 (a); and Mont. Code Ann. §75-10-701, et seq. with respect to the Present Contamination at the Property; and,

(b) any claims of the State for natural resources pursuant to Sections 107(a) and (f) of CERCLA, 42 U.S.C. § 9607 (a) and (f), with regard to any Present Contamination of the Property, as of the effective date of the lease with option to purchase referenced in Paragraph 3, above.

9. ADL hereby makes assignment and transfer to Premier of such rights, benefits, duties, and obligations as enumerated herein, to the fullest extent allowed or not otherwise precluded, all relative to the possessory and pending ownership interest in the Property by Premier.

10. Premier certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA and the State all information currently in its possession or control and in the possession or control of its officers, directors, employees, contractors, and agents which relates in any way to any contamination or potential contamination at the property referenced in Paragraph 3, above, and to its qualification for this agreement. Premier also certifies that to the best of its knowledge and belief it has not caused or contributed to a release of hazardous substance at the Property. If EPA and the state determine that information provided by Premier is not materially accurate and complete, the Covenant Not to Sue in Section VIII shall be null and void and EPA and the State reserve all rights they may have.

11. This transfer of Agreement shall be effective upon the day executed by EPA. Any amendment to the Agreement shall not be effective as to Premier and the rights and obligations



assigned and assumed herein without the written consent of Premier. This transfer of Agreement may be executed in counterparts, or by facsimile or electronic signature, with such counterparts or signatures constituting a fully executed agreement.

This Consent to be Bound is dated this \_\_\_\_ day of \_\_\_\_\_, 2017.

Premier Industries, LLC

\_\_\_\_\_  
Lane McNamara, Manager

\_\_\_\_\_  
(date)

Anaconda-Deer Lodge County

\_\_\_\_\_  
Connie T. Daniels, Chief Executive Officer

\_\_\_\_\_  
(date)

Acknowledged and Approved:  
United States Environmental Protection Agency

\_\_\_\_\_  
by: \_\_\_\_\_  
its: \_\_\_\_\_

\_\_\_\_\_  
(date)

State of Montana, by and through the Montana  
Department of Environmental Quality

\_\_\_\_\_  
by: \_\_\_\_\_  
its: \_\_\_\_\_

\_\_\_\_\_  
(date)

Reviewed for legal content:

\_\_\_\_\_  
by:

\_\_\_\_\_  
(date)